

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs May 19, 2009

CHARLES RAY O'QUINN v. STATE OF TENNESSEE

Appeal from the Criminal Court for Washington County
Nos. 17527, 17999 Lynn W. Brown, Judge

No. E2008-02728-CCA-R3-HC - Filed June 22, 2009

The petitioner, Charles Ray O'Quinn, appeals from the denial of his petitions for post-conviction relief and writ of habeas corpus. In this appeal, he contends that the trial court erred by summarily dismissing the petitions. Discerning no error, we affirm the judgment of the trial court.

Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

Charles Ray O'Quinn, Tiptonville, Tennessee, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Cameron L. Hyder, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

On October 2, 2008, the petitioner, Charles Ray O'Quinn, filed a "Petition for Post-Conviction Relief and/or Motion for Habeas Corpus," challenging his 1989 guilty-pleaded convictions of two counts of aggravated rape. The petitioner claimed that he had been denied the effective assistance of counsel in relation to the guilty pleas and that his 35-year, persistent offender sentence was illegal. The petitioner acknowledged that his petition for post-conviction relief had been filed outside the applicable three-year statute of limitations,¹ but he argued that due process required the tolling of the limitations period.

The Washington County Criminal Court denied the petition on November 18, 2008, declaring the petition for post-conviction relief time-barred and ruling that "[n]othing in the motion for [h]abeas [c]orpus would support a finding by this court that petitioner's conviction is void or that his sentence has expired." The petitioner filed a timely notice of appeal on December 8, 2008.

¹ At the time of the petitioner's offense, the Post-Conviction Procedure Act provided for a three-year statute of limitations for the filing of petitions for post-conviction relief. See T.C.A. § 40-30-102 (Supp. 1986).

In this appeal, the petitioner claims that the trial court erred by declaring his post-conviction petition time-barred without conducting an evidentiary hearing to determine whether due process required the tolling of the statute of limitations. In a similar vein, he argues that the trial court erred by summarily dismissing his petition for writ of habeas corpus without appointing counsel and allowing amendment of the petition. He also reasserts the claims underlying the petitions for post-conviction relief and writ of habeas corpus: (1) that the ineffective assistance of his trial counsel rendered his guilty pleas unknowing and involuntary and (2) that his sentence was illegal.

Because the petitioner has presented his petition as both a petition for post-conviction relief and petition for writ of habeas corpus, we will address each avenue of relief in turn.

I. Post-Conviction Petition

The petitioner acknowledges that his petition for post-conviction relief was filed well outside the statute of limitations but contends that due process principles require the tolling of the limitations period in his case. The State asserts that the post-conviction court properly ruled that the petition was time-barred because “the petitioner has failed to show how due process requires tolling of the statute of limitations.” We agree with the State.

The statute of limitations for filing a post-conviction petition is jurisdictional. *See* T.C.A. § 40-30-102 (Supp. 1986) (“A prisoner in custody under sentence of a court of this state must petition for post-conviction relief under this chapter within three (3) years of the date of the final action of the highest state appellate court to which an appeal is taken or consideration of such petition shall be barred.”). Our supreme court has held that the statute of limitations “is an element of the right to file a post-conviction petition and that it is not an affirmative defense that must be asserted by the State.” *State v. Nix*, 40 S.W.3d 459, 464 (Tenn. 2001). Thus, “it is incumbent upon a petitioner to include allegations of fact in the petition establishing either timely filing or tolling of the statutory period,” and the “[f]ailure to include sufficient factual allegations of either compliance with the statute or [circumstances] requiring tolling will result in dismissal.” *Id.*

Here, the petitioner states simply that due process principles require the tolling of the statute of limitations but does not include any factual allegations to support his assertion. The petitioner’s bare allegation, without more, is insufficient to trigger any further inquiry. In consequence, the post-conviction court did not err by denying the petition as untimely.

II. Petition for Writ of Habeas Corpus

The petitioner claims entitlement to habeas corpus relief on grounds that his sentence is illegal. Citing our supreme court’s opinion in *State v. Gomez*, 239 S.W.3d 733 (Tenn. 2007), the petitioner asserts that his 35-year effective sentence is unconstitutional because the trial court impermissibly enhanced his sentence only on the basis of improper judicial fact-finding. The State contends that the petitioner has failed to state a claim for habeas corpus relief. We agree with the State.

“The determination of whether habeas corpus relief should be granted is a question of law.” *Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007) (citing *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000)). Our review of the habeas corpus court’s decision is, therefore, “de novo with no presumption of correctness afforded to the [habeas corpus] court.” *Id.* (citing *Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d 406, 408 (Tenn. 2006)).

Tennessee Code Annotated section 29-21-101 provides that “[a]ny person imprisoned or restrained of liberty, under any pretense whatsoever, except in cases specified in § 29-21-102, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment and restraint.” T.C.A. § 29-21-101 (2000). Despite the broad wording of the statute, a writ of habeas corpus may be granted only when the petitioner has established a lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. *See Ussery v. Avery*, 432 S.W.2d 656, 658; *State v. Galloway*, 45 Tenn. (5 Cold.) 326 (1868). The purpose of the state habeas corpus petition is to contest a void, not merely a voidable, judgment. *State ex rel. Newsom v. Henderson*, 424 S.W.2d 186, 189 (Tenn. 1968). A void conviction is one which strikes at the jurisdictional integrity of the trial court. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *see State ex rel. Anglin v. Mitchell*, 575 S.W.2d 284, 287 (Tenn. 1979); *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). Because in the petitioner’s case the trial court apparently had jurisdiction over the *actus reus*, the subject matter, and the person of the petitioner, the petitioner’s jurisdictional issues are limited to the claims that the court was without authority to enter the judgments. *See Anglin*, 575 S.W.2d at 287 (“‘Jurisdiction’ in the sense here used, is not limited to jurisdiction of the person or of the subject matter but also includes lawful authority of the court to render the particular order or judgment whereby the petitioner has been imprisoned.”); *see also Archer*, 851 S.W.2d at 164; *Passarella*, 891 S.W.2d at 627.

The petitioner’s claim that the trial court enhanced his sentence in violation of the recent holdings of our supreme court does not avail him habeas corpus relief. The petitioner’s claim, even if true, would render the judgments voidable rather than void and is not, therefore, a cognizable claim for habeas corpus relief. Moreover, the petitioner was sentenced some 18 years before our supreme court’s decision in *Gomez* and some 15 years before the United States Supreme Court’s decision in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), upon which *Gomez* was based. “*Blakely* did not announce a new rule and . . . even if *Blakely* had announced a new rule, relief [can] be granted only in ‘pipeline’ cases” *David Earl Palmer v. State*, No. W2005-01421-CCA-R3-PC, slip op. at 9 (Tenn. Crim. App., Jackson, Nov. 3, 2006); *see also Billy Merle Meeks v. Ricky J. Bell, Warden*, No. M2005-00626-CCA-R3-HC (Tenn. Crim. App., Nashville, Nov. 13, 2007). Like the petitioner in *Palmer*, this petitioner’s “case is a separate collateral attack and is not in the pipeline.” *See id.* In consequence, the habeas corpus court did not err by summarily denying the petition for writ of habeas corpus.

III. Claims of Ineffective Assistance of Counsel and Involuntary Guilty Plea

The petitioner reasserts on appeal that he was denied the effective assistance of counsel at trial and that his guilty pleas were unknowingly and involuntarily entered. Because these claims are properly considered as part of a petition for post-conviction relief and because the petition

in this case is time-barred, we will not address these claims on appeal. Similarly, neither claim presents a cognizable ground for habeas corpus relief.

IV. Conclusion

Because the petitioner failed to allege sufficient facts to warrant due process tolling of the statute of limitations, the post-conviction court did not err by denying the post-conviction petition as time-barred. Because the petitioner failed to state a cognizable claim for habeas corpus relief, the court did not err by summarily dismissing his petition for writ of habeas corpus.

JAMES CURWOOD WITT, JR., JUDGE